

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
WESTERN DIVISION

EDDIE F. MARSHALL, et. al.,

Plaintiffs,

vs.

OHIO DEPARTMENT  
OF EDUCATION, et. al.,

Defendants.

Case No. C-1-02-0189

Judge Weber  
Magistrate Judge Hogan

RESPONSE OF PLAINTIFFS  
TO ORDER TO SHOW CAUSE

Now come plaintiffs by and through counsel and hereby respond to the the Court's Order to Show Cause dated December 6, 2004.

Plaintiffs on August 18, 2003, filed their Amended Complaint and served said Amended Complaint and Summons upon New-Party Defendants, by certified mail. All but two were received and the green return receipt cards were returned by the post office (Summons and Amended Complaint sent to New-Party Defendants, Greg Grant and Susan Goins). In preparation to mailing the Summonses together with the green cards of the U.S. Post Office to the Clerk of Courts Office, counsel for plaintiff, had a telephone conversation with an employee of the Clerk's office who advised counsel that certified mail service is not accepted in the Southern District and that service had to issued by Marshall Service.

Notwithstanding this, counsel for defendants, Roger Gary Winters entered his appearance for all of twelve new-party defendants on August 25, 2003, when

he filed a Memorandum on their behalf and continued to file other pleadings on their behalf as the Motion For More Definite Statement, filed on June 29, 2004, and the Response filed on August 6, 2004.

Counsel for plaintiff interpreted this as a waiver of service and a voluntary entry on the behalf of the new-party defendants, and any issue as to service was moot. Counsel for plaintiff was awaiting this Court's ruling on the Motion For More Definite Statement which Defendants and New-Party Defendants filed on June 29, 2004.

Upon receipt of the Court's Order to Show Cause, counsel for plaintiff again reviewed the docket and the pleadings, to determine whether in fact counsel appeared for the twelve new-party defendants. The docket indicates that the new-party defendants did appear as parties. However, notwithstanding the foregoing, counsel for plaintiff, filed a correction to the Amended Complaint on December 21, 2004, document No. 72, and on December 22, 2004, filed a Request For Marshall Service, document No. 73, and delivered the appropriate hard copy documents to the Clerk of Court's Office, by Federal Express, to effectuate service by the United States Marshall's Office upon the twelve New-Party Defendants.

Plaintiffs respectfully submits that the failure of plaintiffs to effectuate service by the United States Marshall's Office, prior to the receipt of the Court's Order To Show Cause, was made upon a reasonable and good faith interpretation of the docket and the pleadings which were filed on behalf of New-Party Defendants, and not due to any desire on plaintiffs part not to meet their obligations as parties to this litigation.

WHEREFORE, plaintiffs respectfully request this Court that their Amended Complaint not be dismissed, and that they be granted additional time to permit the United States Marshall's Office to make service upon new-party defendants, as plaintiffs requested on December 22, 2004.

Respectfully submitted,

S/Joseph Bancsi

JOSEPH BANCSI #0025450  
Attorney For Plaintiffs  
Lakeside Place, Suite 450  
323 West Lakeside Avenue  
Cleveland, Ohio 44113  
(216) 781-0111  
(216) 781-6242 (fax)  
jb@bancsilaw.com

CERTIFICATE OF SERVICE

True copy of the foregoing Response was filed electronically this 27<sup>th</sup> day of December, 2004. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system.

S/Joseph Bancsi

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JOSEPH BANCSI  
Attorney For Plaintiffs